

1
2
3
4
5 **UNITED STATES DISTRICT COURT**
6 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
7 **SAN FRANCISCO DIVISION**

8 CENTER FOR BIOLOGICAL DIVERSITY,

9 *Plaintiff,*

10 v.

11 GINA RAIMONDO, in her official capacity
12 as Secretary of Commerce; and NATIONAL
13 MARINE FISHERIES SERVICE,

14 *Defendants.*

Case No. 3:22-cv-00117-JD

**DECLARATION OF DOUGLAS
BEVINGTON IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

15
16 I, Douglas Bevington, declare as follows:

17 1. I have personal knowledge of the matters stated below, and I could and would
18 testify to these statements if called as a witness.

19 2. I am a member of the Center for Biological Diversity ("Center"). I became a
20 member because I believe the Center effectively represents my interests in preserving
21 biodiversity and protecting endangered species. I rely on the Center to advocate on behalf of
22 imperiled species, including marine mammals and sea turtles found along the California coast.

23 3. I care deeply about the conservation of native species and their habitat. My
24 education and background reflect my interest in environmental protection. I earned a Ph.D. in
25 Environmental Sociology from the University of California, Santa Cruz, where my doctoral
26 research focused on endangered species policy. I also hold a Master's degree in Environmental
27 Sociology from the University of Oregon and a Bachelor's degree in Environmental Sociology
28

1 from the University of California, Santa Cruz.

2 4. I currently live in Kensington, California, within sight of the San Francisco Bay.
3 Since first moving to California in 1988, I have frequently sought to observe marine mammals
4 and sea turtles in Pacific Ocean waters near my home. Specifically, I have enjoyed viewing and
5 attempting to view sea turtles, sharks, seabirds, seals, sea lions, dolphins, and whales -- including
6 humpback whales -- on numerous whale watching expeditions through the Gulf of the Farallones
7 National Marine Sanctuary and Monterey Bay, California.

8 5. I have supported environmental protection throughout my life. I derive great
9 personal happiness from watching wildlife recreationally. In addition, as an environmental
10 grantmaker and writer, I have a professional interest in conservation.

11 6. In 2009, I published *The Rebirth of Environmentalism: Grassroots Activism from*
12 *the Spotted Owl to the Polar Bear* (Island Press), which built upon the themes of my doctoral
13 research. My book described the Center's successful efforts to protect leatherback sea turtles by
14 forcing seasonal closures of California's swordfish fishery using drift gillnets. I argued that
15 these efforts were an important example of a new form of grassroots environmental activism. In
16 addition, I observed that the swordfish drift gillnet fishery had not killed a single leatherback in
17 the years since the Center first intervened.

18 7. I have a longstanding interest in observing, enjoying, and working to protect
19 threatened and endangered species. For nearly thirty years, I have acted on this interest by
20 participating in conservation projects and viewing, or attempting to view, sea turtles, seals,
21 humpback whales, and other imperiled species in the wild. Even when I am unable to observe
22 sea turtles and whales directly, I derive great satisfaction from the knowledge that these animals
23 exist and receive federal protection.

24 8. I became fascinated by sea turtles as a high school student when, in spring 1987, I
25 participated in a conservation science project through the organization Earthwatch protecting
26 nesting habitat for the leatherback sea turtle on Culebra Island in Puerto Rico.

1 9. My educational and professional work related to marine mammals began in
2 summer 1988, when I participated in a scientific and conservation study of humpback whales in
3 the Gulf of Maine through the School for Field Studies. That research involved a multi-week trip
4 on a ship to conduct scientific studies of whale behavior. During summer 1988, I also worked for
5 Greenpeace because of their marine mammal protection efforts and participated in rallies and
6 other activities in support of marine mammal protection.

7 10. In summer 1992, I worked on a guidebook on the endangered species of
8 California titled "Life on the Edge" edited by Carl Thelander (BioSystems Books, 1994). I was
9 responsible for researching and writing the species accounts of all the endangered whales in that
10 book, including the humpback whale. Such research further fueled my knowledge and interest in
11 marine mammals in general and whales in particular. In 1995, I worked with the Endangered
12 Species Coalition to create a travelling exhibit of photographs depicting endangered species to
13 promote conservation and recovery.

14 11. I continue to try to incorporate watching marine mammals and sea turtles into my
15 professional and personal life whenever possible. Since first moving to California in the fall
16 1988, I have studied and sought to view the various marine mammals of the Pacific. I frequently
17 go to the coast to look for whales and dolphins from shore. I also often go on offshore whale-
18 watching boat trips. In 1989, I went on my first whale watch to observe the migration of the gray
19 whale from Monterey. I have also gone whale watching in San Diego and Baja California during
20 the gray whale migration. I have taken numerous whale watching trips through the Oceanic
21 Society to view humpback whales, as well as leatherback sea turtles, near the Farallon Islands.
22 For more than two decades, I have taken many whale watching trips in Monterey Bay to view
23 blue whales, humpback whales, gray whales, fin whales, dolphins, seals, sea lions, seabirds,
24 sharks, and leatherback sea turtles. I have also watched humpback whales during visits to Alaska
25 in 1989 and 2009. And I had a delightful time seeing the right whales and humpback whales of
26 the Southern Hemisphere during my honeymoon in Australia in 2006.

1 12. Over the years, I have continued to regularly go on whale watching trips. Here are
2 some more recent examples. My trip on September 6, 2015 on the Monterey Bay was
3 particularly memorable because this was one of my first whale watching trips with my daughter.
4 We saw humpback whales.

5 13. On the day before Thanksgiving in 2017, I took a whale watching trip in
6 Monterey Bay and saw multiple humpback whales. This trip was troubling for me because there
7 were indications of entanglements on the whales. Specifically, there appeared to be a rope or
8 buoy wrapped around one of the humpback whales.

9 14. For my last whale watching trip before the pandemic, I went out on Monterey Bay
10 on the Sunday of Labor Day weekend 2019. I saw humpback whales and dolphins, and had a
11 good view of a blue shark. We also had a close encounter with a small group of Risso's dolphins.

12 15. Because of the pandemic, I did not do any whale watching boat trips in 2020. I
13 returned to offshore whale watching on Monterey Bay on a trip with my daughter on June 20,
14 2021. The experience really stuck with my daughter, who keeps asking when we will go whale-
15 watching again. I plan to take her on our next offshore whale watching trip in Monterey Bay this
16 summer to see humpback whales. We also will look for and hope to see blue whales, fin whales,
17 and leatherback sea turtles.

18 16. Even when I am not on whale watching boats, I continue to frequently watch for
19 whales along the California coast. During the New Year's holiday at the end of 2021 and
20 beginning of 2022, my family and I visited the Central California coast near Morro Bay,
21 including Montana de Oro State Park, and saw multiple migrating gray whales from shore.
22 During our drive home along the coast of Big Sur, we saw numerous gray whales. I was
23 particularly proud that my daughter spotted a whale for us that breached, since it is a rare to see
24 migrating gray whales breaching.

25 17. I go frequently to watch marine mammals and sea turtles because I get great
26 pleasure from being on the ocean and seeing wildlife, including humpback whales. Seeing
27 humpback whales hold special meaning for me. They were the first type of whale I got to see
28

1 first-hand. I spent intensive time studying them during my School for Field Studies program.
2 And humpback whales were a part of my honeymoon experience. Moreover, their breaching,
3 lunge-feeding, and other dynamic behaviors make humpback whales quite exciting to watch.

4 18. My educational, professional, and recreational experiences have left me with a
5 deep appreciation for marine mammals and sea turtles, and I strongly support efforts to ensure
6 their survival and recovery. The injury and death of these animals from entanglements in
7 sablefish pot gear directly impairs my interest in the continued existence of marine mammals and
8 sea turtles off the California coast.

9 19. When I see news stories about whales entangled in fishing gear, it's deeply
10 upsetting. I have seen news headlines about the ongoing and record-breaking entanglements off
11 the U.S. West Coast. This shocks me because the California coast is my backyard; the affected
12 animals are the whales and sea turtles I am most likely to see. Likewise, because of humpback
13 whale migrations, the whales I see in California are also at risk from entanglement elsewhere,
14 including off of Oregon and Washington. These harms and dangers from beyond California to
15 the whales I treasure seeing in California are distressing to me.

16 20. I am well aware of the history of whale entanglements in fishing gear because I
17 have researched and written about it. The drift gillnet fishery has changed to remedy the problem
18 of entanglements. It is disturbing that this level of whale entanglement is occurring in the
19 sablefish pot fishery without required changes.

20 21. I am concerned that the conservation work that I have supported in the past is
21 being undone by the unchecked entanglements in fishing gear. I believe that that the deaths and
22 injuries of humpback whales from entanglements are hindering recovery of these endangered
23 species that I enjoy watching, reading about and writing about. I am convinced that the National
24 Marine Fisheries Service's failure to lawfully manage the fishery is morally wrong.

25 22. This litigation protects my recreational interests in watching whales off the
26 California coast by seeking to force action that help will protect humpback whales from
27 entanglements. I like to go wildlife watching and know that the marine mammals and sea turtles
28

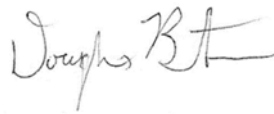
1 are better-protected due to the conservation policies that I have studied and worked on for
2 decades, such as fishing closures. Knowing that makes watching wildlife a more joyful
3 experience for me.

4 23. On the other hand, knowing that the recovery of whales is slowed by sablefish pot
5 gear entanglements, especially if I see that fishing gear on a whale, is a taint and a cloud over
6 that experience. It is distressing also to see the scars on whales from entanglement and know
7 they have suffered because of human actions. These entanglements and their effects on wildlife
8 makes what would otherwise be a singularly positive experience into something more mixed and
9 bittersweet. Continued entanglements in pot fishing gear make it less likely that I—and my
10 family—will be able to see humpback whales, and other animals like sea turtles, off California in
11 the future.

12 24. As someone who works on environmental policy issues and writes about those
13 things, the idea that the government will not take steps to protect these species from sablefish pot
14 fishing gear entanglement is a bad precedent for environmental policy overall. It undermines the
15 reputation and capacity of U.S. agencies to be effective environmental stewards.

16
17 I declare under penalty of perjury that the foregoing declaration is true and correct.
18
19

20
21 Dated: July 18, 2022_____



22 _____
23 Douglas Bevington
24
25
26
27
28